

# EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

-----x  
HAPAG-LLOYD AKTIENGESELLSCHAFT,  
Plaintiff,

-against- 14 Civ. 9949

U.S. OIL TRADING LLC, O.W. BUNKER  
GERMANY GMBH, O.W. BUNKER & TRADING  
A/S, ING BANK N.V., CREDIT AGRICOLE  
S.A.,  
Defendants.

-----x  
IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

-----x  
U.S. OIL TRADING LLC,  
Plaintiff,

-against- Case No. 15-6718

M/V VIENNA EXPRESS, her tackle,  
boilers, apparel, furniture, engines,  
appurtenances, etc., in rem, and  
M/V SOFIA EXPRESS, her tackle,  
boilers, apparel, furniture, engines,  
appurtenances, etc., in rem,  
Defendants.

-----x

January 7, 2016  
12:00 p.m.

Videoconference Deposition of THOR  
NIELSEN, held at the offices of Seward & Kissel  
LLP, One Battery Park Plaza, New York, New York,  
before Roberta Caiola, a Shorthand Reporter and  
Notary Public within and for the State of New  
York.

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4	as Security Agent:	4	Nielsen Mr. Heilig 63
5	SEWARD & KISSEL LLP	5	Ms. Venezia 79
6	BRIAN P. MALONEY, ESQ.	6	Mr. Heilig 108
7	CELINDA J. METRO, ESQ.	7	Ms. Metro 112
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9	New York, New York 10004	9	
10		10	E X H I B I T S
11	Attorneys for U.S. Oil Trading LLC:	11	Nielsen Description Page
12	CLYDE & CO. US LLP	12	Exhibit 1 Notice of Deposition in case 32
13	JOHN KEOUGH, ESQ.	13	14 CV 9949
14	CASEY BURLAGE, ESQ.	14	Exhibit 2 Notice of Deposition in case 32
15	405 Lexington Avenue	15	15-6718, U.S. Oil Trading
16	New York, New York 10174	16	against VIENNA EXPRESS
17	(Present via videoconference)	17	Exhibit 3 U.S. Oil Trading's production 39
18		18	in the 9949 action, Bates
19	Attorneys for Hapag-Lloyd Aktiengesellschaft	19	numbered USOT 000001 through
20	and COSCO Defendants:	20	USOT 000347
21	FREEHILL HOGAN & MAHAR LLP	21	Exhibit 4 Production made by U.S. Oil 40
22	GINA M. VENEZIA, ESQ.	22	Trading in the VIENNA EXPRESS
23	MICHAEL DEHART, ESQ.	23	matter, Case Number 15-6718,
24	80 Pine Street	24	Bates numbered USOT 000001
25	New York, New York 10005	25	through USOT 000107

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5	DARREN AZMAN, ESQ.	5	capacity
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10	Attorneys for O.W. Bunker Germany GMBH:	10	U.S. Oil Trading
11	HILL RIVKINS LLP	11	(Original exhibits retained by the Court
12	JUSTIN M. HEILIG, ESQ.	12	Reporter to accompany the transcript)
13	45 Broadway, Suite 1500	13	
14	New York, New York 10006-3739	14	
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2 (Pages 2 to 5)

<p style="text-align: right;">Page 26</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. Sorry, can you say that again?</p> <p>3 Q. Sure. Which individuals' files</p> <p>4 were collected?</p> <p>5 MR. KEOUGH: Objection to the form.</p> <p>6 A. We have a file that we call our</p> <p>7 bunker files. They are essentially all the</p> <p>8 movement on our docks and each movement has its</p> <p>9 own file, and so all the documents related to</p> <p>10 each movement are contained in that file. So</p> <p>11 the information that I pulled was the six files</p> <p>12 that related to O.W. Bunker.</p> <p>13 Q. Were those organized by each fuel</p> <p>14 delivery to each vessel involved in these cases?</p> <p>15 A. Yeah, they're dated, so each file</p> <p>16 has a date and that's the date of delivery.</p> <p>17 Q. Were emails and instant messages</p> <p>18 also searched in connection with the production</p> <p>19 in this matter?</p> <p>20 A. Yes.</p> <p>21 Q. What were the criteria used to</p> <p>22 determine which emails and instant messages</p> <p>23 should be produced?</p> <p>24 A. The criteria for that was any</p> <p>25 emails or IMs that related to O.W. Bunker.</p>	<p style="text-align: right;">Page 28</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 sells the products across our dock. He is the</p> <p>3 one that schedules them, makes sure that any</p> <p>4 adjustments that need to occur if some</p> <p>5 offloading takes longer. He works with the</p> <p>6 companies to plan for the vessels and the</p> <p>7 delivery of products to those vessels.</p> <p>8 He was also the guy that would</p> <p>9 receive the request for the purchase of product,</p> <p>10 marine fuel, and he would respond to those with</p> <p>11 a quote. Then he would process the paperwork</p> <p>12 associated with making that transaction happen.</p> <p>13 Q. Are you familiar with the fuel</p> <p>14 deliveries that are at issue in this case, just</p> <p>15 generally speaking?</p> <p>16 A. I am.</p> <p>17 Q. Do you recall which vessels are</p> <p>18 involved in these matters?</p> <p>19 A. Off the top of my head there is the</p> <p>20 VIENNA EXPRESS, the SOFIA EXPRESS, the ROBERTA,</p> <p>21 I can't think of the second name on that.</p> <p>22 There's also the M/V LONG LUCKY, the GARDENIA</p> <p>23 ACE, and then it looks like there's one more</p> <p>24 vessel that I can't remember.</p> <p>25 Q. The vessels that we have here in</p>
<p style="text-align: right;">Page 27</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 Q. Were search terms employed or did</p> <p>3 you look at all of the emails; how was it done?</p> <p>4 A. I did not do those myself. The</p> <p>5 person that would have had those interactions</p> <p>6 with them did those and then provided them to</p> <p>7 me.</p> <p>8 Q. Was that an employee at U.S. Oil?</p> <p>9 A. It was.</p> <p>10 Q. Who was that?</p> <p>11 A. His name, the main person would</p> <p>12 have been a gentleman by the name of Lee Weber</p> <p>13 Q. Who is Mr. Weber?</p> <p>14 A. Mr. Weber is our logistics planner.</p> <p>15 Q. What department does he work in at</p> <p>16 U.S. Oil?</p> <p>17 A. He is in the marketing group and</p> <p>18 would report to Cameron Proudfoot, the VP of</p> <p>19 supply and marketing.</p> <p>20 Q. You mentioned that Mr. Weber was a</p> <p>21 logistics planner. What do you understand that</p> <p>22 job to include, what responsibilities do you</p> <p>23 understand that job to include?</p> <p>24 A. Well, one of his responsibilities</p> <p>25 is he coordinates all of the deliveries and</p>	<p style="text-align: right;">Page 29</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 matters 9949 and 14-9949 and 15-6718 are the</p> <p>3 SANTA ROBERTA, the SEASPAN HAMBURG, the VIENNA</p> <p>4 EXPRESS and the SOFIA EXPRESS.</p> <p>5 I guess the question I have is, if</p> <p>6 you know, who purchased the fuel from U.S. Oil</p> <p>7 Trading; was it O.W. Bunker USA?</p> <p>8 A. Our customer was the Danish entity.</p> <p>9 How the quotes or requests came, you know,</p> <p>10 doesn't really matter to me, our customer was</p> <p>11 the Danish entity.</p> <p>12 Q. What do you base that statement on?</p> <p>13 A. Because that's the company that we</p> <p>14 provided credit for. It's their financial</p> <p>15 statements for which the credit was provided.</p> <p>16 Q. Were there any supply contracts or</p> <p>17 pricing agreements or trading agreements entered</p> <p>18 into with the Danish entity?</p> <p>19 A. I am not aware of any agreements.</p> <p>20 Q. Were there any communications</p> <p>21 between individuals over in Denmark and persons</p> <p>22 out in Tacoma about the specific fuel deliveries</p> <p>23 in this matter?</p> <p>24 A. I am not aware of any necessarily,</p> <p>25 but it doesn't mean that there wasn't. I think</p>

<p style="text-align: right;">Page 38</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 You can answer.</p> <p>3 A. You know, I again am not a lawyer,</p> <p>4 but what I see the bunker receipt as is like a</p> <p>5 bill of lading, it is the main billing document.</p> <p>6 Q. Did you issue any invoice to the</p> <p>7 vessel interests, to the vessels or to their</p> <p>8 owners or charterers after the fuel was</p> <p>9 delivered?</p> <p>10 A. No, we did not.</p> <p>11 Q. Who did you issue your invoices to?</p> <p>12 A. We issued them to O.W. Bunker &amp;</p> <p>13 Trading AG.</p> <p>14 Q. Did you receive any purchase order</p> <p>15 confirmations from O.W. Bunker &amp; Trading I think</p> <p>16 it's A/S?</p> <p>17 A. My recollection is that those came</p> <p>18 from the USA entity.</p> <p>19 Q. You mentioned your understanding of</p> <p>20 the contractual relationship and other documents</p> <p>21 that might have been signed in your files.</p> <p>22 Is that the extent of the</p> <p>23 relationship with the vessels or their owners or</p> <p>24 charterers?</p> <p>25 MR. KEOUGH: Objection to the form</p>	<p style="text-align: right;">Page 40</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 that have been numbered USOT 000001 through 347.</p> <p>3 I'm also going to mark at this time the</p> <p>4 production made by U.S. Oil Trading in the</p> <p>5 VIENNA EXPRESS matter, that's case number</p> <p>6 15-6718, I'll mark that as Exhibit 4. Those</p> <p>7 documents have been numbered USOT 000001 through</p> <p>8 107.</p> <p>9 (Nielsen Exhibit 4, Production made</p> <p>10 by U.S. Oil Trading in the VIENNA EXPRESS</p> <p>11 matter, Case Number 15-6718, Bates numbered USOT</p> <p>12 000001 through USOT 000107, marked for</p> <p>13 identification.)</p> <p>14 Q. Do you have those document</p> <p>15 productions there with you in Washington, sir?</p> <p>16 A. I do.</p> <p>17 Q. To short circuit some of this. The</p> <p>18 documents that have been numbered 1 through 107</p> <p>19 that we've marked as Exhibit 4, are those a</p> <p>20 subset of the documents that were produced in</p> <p>21 the 9949 case?</p> <p>22 MR. KEOUGH: Objection to the form.</p> <p>23 Q. In other words, are you generally</p> <p>24 familiar that the documents that were produced</p> <p>25 as Exhibit 4 related to the VIENNA EXPRESS?</p>
<p style="text-align: right;">Page 39</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 of the question.</p> <p>3 A. I'm not aware of any others.</p> <p>4 Q. Topic 2 requests U.S. Oil's</p> <p>5 understanding of the communications had with the</p> <p>6 vessels or the vessel interests in this action.</p> <p>7 Do you see that topic?</p> <p>8 A. I do.</p> <p>9 Q. Were there communications between</p> <p>10 U.S. Oil and the vessels, or their owners or</p> <p>11 charterers?</p> <p>12 A. Just to the extent of the</p> <p>13 documentation that has been signed.</p> <p>14 Q. We can put Exhibits 1 and 2 aside</p> <p>15 for now. I have a couple of questions about the</p> <p>16 documents produced by U.S. Oil Trading in this</p> <p>17 action.</p> <p>18 MR. MALONEY: What I would like to</p> <p>19 do is mark U.S. Oil Trading's production in the</p> <p>20 9949 action as Exhibit Number 3.</p> <p>21 (Nielsen Exhibit 3, U.S. Oil</p> <p>22 Trading's production in the 9949 action, Bates</p> <p>23 numbered USOT 000001 through USOT 000347, marked</p> <p>24 for identification.)</p> <p>25 MR. MALONEY: Those are documents</p>	<p style="text-align: right;">Page 41</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. Yes, I am.</p> <p>3 Q. And do you know, are there any</p> <p>4 documents in this production that are not in the</p> <p>5 production that was marked as Exhibit 3?</p> <p>6 A. I haven't compared them, so I don't</p> <p>7 know specifically. They look similar.</p> <p>8 Q. I believe that's the case, and I</p> <p>9 don't know if counsel for U.S. Oil Trading can</p> <p>10 confirm that.</p> <p>11 MR. KEOUGH: I believe so, but I'm</p> <p>12 not here to testify. Yes, I think that's</p> <p>13 correct.</p> <p>14 MR. MALONEY: Okay.</p> <p>15 Q. I'm going to focus on the documents</p> <p>16 in Exhibit 3, which I understand to contain</p> <p>17 documents concerning the VIENNA EXPRESS and the</p> <p>18 other vessels.</p> <p>19 MR. KEOUGH: Excuse me Brian, just</p> <p>20 so it's clear. We believe that the documents</p> <p>21 numbered 1 through 107 are the same in Exhibits</p> <p>22 3 and 4.</p> <p>23 MR. MALONEY: Okay. Thanks for</p> <p>24 that clarification.</p> <p>25 Q. I want to ask you to take a look at</p>

<p style="text-align: right;">Page 50</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 delivered to O.W.?</p> <p>3 A. It was definitely delivered to</p> <p>4 O.W.. Whether it was done by paper or</p> <p>5 electronically, I do not recall.</p> <p>6 Q. There's a box at the bottom that</p> <p>7 refers to security interest, and it mentions</p> <p>8 Credit Agricole. Do you have any information</p> <p>9 about that?</p> <p>10 MR. KEOUGH: Objection to the form.</p> <p>11 A. Yeah. That is -- the account is</p> <p>12 our main account at Wells Fargo that it is being</p> <p>13 deposited into. Credit Agricole has disclaimed</p> <p>14 any rights to these receivables and they are not</p> <p>15 currently funding under the facility related to</p> <p>16 these receivables. They are specifically</p> <p>17 excluded.</p> <p>18 Q. At the bottom of the page there are</p> <p>19 some designations. Do you know what BWTD refers</p> <p>20 to?</p> <p>21 A. Yeah, that is -- B refers to a</p> <p>22 billing document, W is Washington and the D --</p> <p>23 each one of those has a designation</p> <p>24 specifically, but it's basically referencing</p> <p>25 that this is a movement in Washington across the</p>	<p style="text-align: right;">Page 52</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 Q. Do you know in the case of the</p> <p>3 SANTA ROBERTA whether that is a barge that was</p> <p>4 owned by U.S. Oil or by some third party?</p> <p>5 A. I don't understand your question.</p> <p>6 Q. Did you use a barging service like</p> <p>7 a Harley Marine or some other company to deliver</p> <p>8 fuel, do you have details on that?</p> <p>9 A. Yes, I do.</p> <p>10 Q. So the record is clear. You do use</p> <p>11 third parties sometimes to deliver fuel?</p> <p>12 A. The vessels -- the vessel is</p> <p>13 controlled by us. We have a, I think it's a</p> <p>14 five-year term with Olympic Tug &amp; Barge, they</p> <p>15 operate the vessel but we control it.</p> <p>16 Q. I want to turn to pages 3 and 4.</p> <p>17 Could you take a look at that?</p> <p>18 A. I have it.</p> <p>19 Q. Have you seen this document before?</p> <p>20 A. Yes. This is one of the documents</p> <p>21 that's in our bunker files.</p> <p>22 Q. Is this an example of the kinds of</p> <p>23 purchase order confirmations you would receive</p> <p>24 from O.W. Bunker USA in connection with these</p> <p>25 fuel deliveries?</p>
<p style="text-align: right;">Page 51</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 dock.</p> <p>3 Q. There's a customer number below</p> <p>4 that. Is that the customer number for O.W.</p> <p>5 Bunker?</p> <p>6 A. It is.</p> <p>7 Q. Back up a little bit. A little</p> <p>8 ways up the page it says, "Past due accounts are</p> <p>9 subject to interest."</p> <p>10 Is there any agreement about that</p> <p>11 between U.S. Oil and O.W. Bunker?</p> <p>12 A. Yeah, that's included in our credit</p> <p>13 agreement. In other words, the credit</p> <p>14 application that they complete allows us to</p> <p>15 charge interest on past due.</p> <p>16 Q. Are there any other agreements,</p> <p>17 aside from the credit application or the credit</p> <p>18 agreement, with O.W. Bunker and U.S. Oil?</p> <p>19 A. I'm not aware of any other</p> <p>20 agreement.</p> <p>21 Q. The columns in this invoice, do you</p> <p>22 know what "BETSY" refers to under that second</p> <p>23 column?</p> <p>24 A. Yeah, that is our barge that we use</p> <p>25 to deliver the marine fuel to the vessels.</p>	<p style="text-align: right;">Page 53</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. Yes, it is.</p> <p>3 Q. There's a purchase order number</p> <p>4 issued on this document. Is that something that</p> <p>5 you would need for your files or is that an O.W.</p> <p>6 Bunker purchase order number?</p> <p>7 A. That is their number. We don't --</p> <p>8 to be honest with you, we may or may not have</p> <p>9 used that number in our system; but it is their</p> <p>10 number, not ours.</p> <p>11 Q. The purchase order includes the</p> <p>12 quantity and price of the fuel that O.W. Bunker</p> <p>13 USA is purchasing?</p> <p>14 MR. KEOUGH: Objection to the form</p> <p>15 of the question, misstates his testimony.</p> <p>16 A. It is the quantity and price of the</p> <p>17 product that we are selling to O.W. Bunker &amp;</p> <p>18 Trading AG.</p> <p>19 How this comes to us is -- they're</p> <p>20 one of the entities underneath the Danish court,</p> <p>21 so in all of these dealings we are dealing with</p> <p>22 our customer.</p> <p>23 Q. At the bottom of the purchase order</p> <p>24 it's signed off "Kind Regards Kai Zhou." Do you</p> <p>25 see that, sir?</p>

<p style="text-align: right;">Page 54</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. I do.</p> <p>3 Q. Would you agree with me that those</p> <p>4 phone numbers there for his direct line and his</p> <p>5 cell phone are U.S. numbers?</p> <p>6 A. They look like it.</p> <p>7 Q. Do you see that his office email</p> <p>8 address is houston@owbunker.com?</p> <p>9 A. I see that.</p> <p>10 Q. Do you know if U.S. Oil received</p> <p>11 any purchase order confirmations from any O.W.</p> <p>12 Bunker entity, other than O.W. Bunker USA Inc.?</p> <p>13 A. My recollection is that these all</p> <p>14 came from O.W. Bunker USA.</p> <p>15 Q. Do you know a person by the name of</p> <p>16 Mads Buchwald?</p> <p>17 A. The name sounds familiar, but I</p> <p>18 don't -- I don't recall it.</p> <p>19 MR. MALONEY: I think it's a good</p> <p>20 time to take a 5-minute break, if that's okay</p> <p>21 with you?</p> <p>22 MR. KEOUGH: Sure.</p> <p>23 (Short recess taken.)</p> <p>24 MR. MALONEY: Is everybody back?</p> <p>25 MR. KEOUGH: We're good. Ready to</p>	<p style="text-align: right;">Page 56</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 O.W. Bunker account?</p> <p>3 A. He would have been the main</p> <p>4 contact, yes.</p> <p>5 Q. Was anyone else in the supply and</p> <p>6 marketing department responsible for the O.W.</p> <p>7 Bunker account?</p> <p>8 A. Well, just Cameron Proudfoot</p> <p>9 himself, he's the person that manages that, so</p> <p>10 he would have responsibility.</p> <p>11 Q. Do you know if anyone else worked</p> <p>12 with O.W. Bunker in 2014, other than Mr. Weber</p> <p>13 or Mr. Proudfoot?</p> <p>14 A. I am not aware of anybody else that</p> <p>15 would have been involved.</p> <p>16 Q. In the supply and marketing</p> <p>17 department?</p> <p>18 A. Correct.</p> <p>19 Q. Mr. Nielsen, do you know if U.S.</p> <p>20 Oil engages in any hedging or risk management</p> <p>21 for exposure to the fuel that it purchases and</p> <p>22 sells?</p> <p>23 A. We do, but we do not do any for</p> <p>24 what I would refer to as the bottom of the</p> <p>25 barrel, which would be asphalt and marine fuel.</p>
<p style="text-align: right;">Page 55</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 go.</p> <p>3 MR. MALONEY: All right.</p> <p>4 BY MR. MALONEY:</p> <p>5 Q. Mr. Nielsen, I just have a handful</p> <p>6 of topics to cover. We talked about the credit</p> <p>7 department, the tax and treasury services</p> <p>8 department and the individuals in that.</p> <p>9 I believe you mentioned earlier</p> <p>10 that Mr. Weber reported to Mr. Proudfoot in the</p> <p>11 sales and trading department, is that correct?</p> <p>12 A. The supply and marketing</p> <p>13 department, yeah.</p> <p>14 Q. Could you describe, what is the</p> <p>15 supply and marketing department?</p> <p>16 A. The supply and marketing</p> <p>17 department, that group is responsible for crude</p> <p>18 acquisitions, as well as the sale of all of our</p> <p>19 products.</p> <p>20 Q. How large is that department?</p> <p>21 A. Currently I think there's ten</p> <p>22 people in that department, and there's</p> <p>23 one person that they use as a contracted</p> <p>24 employee from time to time.</p> <p>25 Q. Was Mr. Weber responsible for the</p>	<p style="text-align: right;">Page 57</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 Q. So do you know if there were any</p> <p>3 hedging operations at U.S. Oil that might have</p> <p>4 mitigated or offset any exposure to O.W.</p> <p>5 Bunker's nonpayment in this case?</p> <p>6 A. No, there would not be.</p> <p>7 Q. When was the first time that U.S.</p> <p>8 Oil learned of financial distress at O.W.</p> <p>9 Bunker?</p> <p>10 A. When it was announced.</p> <p>11 Q. So sometime in early November of</p> <p>12 2014?</p> <p>13 A. Maybe late October, early November.</p> <p>14 Q. Do you have any personal</p> <p>15 recollections of hearing about it?</p> <p>16 A. I recall hearing about a rogue</p> <p>17 trader and some potential issue with having to</p> <p>18 take a hit on their balance sheet, but it didn't</p> <p>19 seem as though there was -- it wasn't something</p> <p>20 that was going to knock them off their feet, but</p> <p>21 then two weeks later you heard the bad news.</p> <p>22 Q. Did you have any conversations with</p> <p>23 Mr. Proudfoot after hearing about the news?</p> <p>24 A. I'm sure we talked about it, and</p> <p>25 our concern about it. My recollection of all</p>

15 (Pages 54 to 57)



<p style="text-align: right;">Page 66</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 behalf of U.S. Oil in the action commenced in</p> <p>3 Washington and subsequently transferred to New</p> <p>4 York, the docket number is 52-2.</p> <p>5 MR. HEILIG: We'll mark this as</p> <p>6 Exhibit Number 7.</p> <p>7 (Nielsen Exhibit 7, Declaration,</p> <p>8 Docket No. 52-2, marked for identification.)</p> <p>9 MR. KEOUGH: It's before the</p> <p>10 witness.</p> <p>11 Q. Mr. Nielsen, do you recall</p> <p>12 executing this document?</p> <p>13 A. I do.</p> <p>14 Q. Did you prepare this document or</p> <p>15 was this prepared for you for your review and</p> <p>16 execution?</p> <p>17 A. It was prepared for me and I</p> <p>18 executed it.</p> <p>19 Q. But you reviewed its contents</p> <p>20 before doing so?</p> <p>21 A. I did.</p> <p>22 Q. And they're accurate, to the best</p> <p>23 of your knowledge?</p> <p>24 A. It is.</p> <p>25 Q. Let's take a look at paragraph 17,</p>	<p style="text-align: right;">Page 68</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 MR. HEILIG: Sure. Will you read</p> <p>3 back the question please.</p> <p>4 (Question read.)</p> <p>5 MR. KEOUGH: Objection.</p> <p>6 A. My understanding of this is that --</p> <p>7 or I guess my look at this is that O.W. Bunker</p> <p>8 was essentially acting as a broker or trader in</p> <p>9 this market, they don't own anything here, and</p> <p>10 we delivered the product to the vessel.</p> <p>11 Q. Did U.S. Oil have any</p> <p>12 communications with Hapag in which Hapag</p> <p>13 indicated that one or more O.W. entities were</p> <p>14 acting as agents of Hapag-Lloyd with respect to</p> <p>15 these transactions?</p> <p>16 MR. KEOUGH: Objection to the form.</p> <p>17 A. Can you repeat the question again,</p> <p>18 please?</p> <p>19 Q. Sure. Did U.S. Oil have any</p> <p>20 communications with Hapag-Lloyd in which</p> <p>21 Hapag-Lloyd indicated that one or more O.W.</p> <p>22 entities were acting as agents of Hapag for</p> <p>23 purposes of these transactions and bunker</p> <p>24 purchases?</p> <p>25 MR. KEOUGH: Same objection.</p>
<p style="text-align: right;">Page 67</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 it's on page 4. Paragraph 17 says:</p> <p>3 "USOT did not enter into contracts</p> <p>4 with HLaG" meaning Hapag-Lloyd "for the subject</p> <p>5 deliveries of bunkers by USOT to the M/V VIENNA</p> <p>6 EXPRESS and M/V SOFIA EXPRESS."</p> <p>7 Is that still your position,</p> <p>8 Mr. Nielsen?</p> <p>9 A. Yes.</p> <p>10 Q. And that's the position of USOT</p> <p>11 still?</p> <p>12 A. Yes.</p> <p>13 Q. What about the two other vessels,</p> <p>14 the SOFIA EXPRESS and -- or, I'm sorry, the</p> <p>15 SEASPAN HAMBURG and the SANTA ROBERTA, would</p> <p>16 that be the same for those two vessels?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. If U.S. Oil did not enter</p> <p>19 into contracts with Hapag, is it also U.S. Oil's</p> <p>20 position that none of the O.W. entities were</p> <p>21 acting as agents of Hapag for purposes of</p> <p>22 purchasing bunker fuel from U.S. Oil?</p> <p>23 MR. KEOUGH: Objection to the form.</p> <p>24 A. Can you ask that question again,</p> <p>25 please?</p>	<p style="text-align: right;">Page 69</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. When I -- when I look at the</p> <p>3 interaction with Lee it seemed like, if I</p> <p>4 recall, that there was some communication that</p> <p>5 was attached to an email from Hapag-Lloyd to</p> <p>6 O.W. Bunker instructing them to acquire the</p> <p>7 fuel. That's my only -- I mean that wasn't a</p> <p>8 direct communication to us, that was attached to</p> <p>9 an email.</p> <p>10 Q. My question was, were there any</p> <p>11 direct communications from Hapag to U.S. Oil in</p> <p>12 which Hapag indicated that one or more O.W.</p> <p>13 entities were acting as its agents?</p> <p>14 MR. KEOUGH: Same objection.</p> <p>15 A. The answer is no.</p> <p>16 Q. Okay. Mr. Nielsen, I would like</p> <p>17 you to take a look at the Verified Complaint</p> <p>18 filed by U.S. Oil Trading in the action</p> <p>19 commenced in Washington and transferred to New</p> <p>20 York.</p> <p>21 MR. HEILIG: We will mark that as</p> <p>22 Exhibit 8.</p> <p>23 (Nielsen Exhibit 8, Verified</p> <p>24 Complaint filed by U.S. Oil Trading, marked for</p> <p>25 identification.)</p>

18 (Pages 66 to 69)



<p style="text-align: right;">Page 70</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 MR. KEOUGH: It's in front of the</p> <p>3 witness.</p> <p>4 Q. Mr. Nielsen, do you recognize this</p> <p>5 document?</p> <p>6 A. I do.</p> <p>7 Q. On page 8, is that your signature</p> <p>8 under the verification?</p> <p>9 A. It is.</p> <p>10 Q. So you verified the accuracy of the</p> <p>11 contents of this pleading?</p> <p>12 A. Correct.</p> <p>13 Q. Mr. Nielsen, let's take a look at</p> <p>14 paragraph 9 on page 2. Do you see paragraph 9,</p> <p>15 Mr. Nielsen?</p> <p>16 A. I do.</p> <p>17 Q. What's the basis for this</p> <p>18 statement?</p> <p>19 A. The basis for the statement is that</p> <p>20 we issued those sales authorizations and</p> <p>21 confirmation related to the sale of marine fuel</p> <p>22 to O.W. Bunker.</p> <p>23 Q. Mr. Nielsen, let's go back quickly</p> <p>24 to Exhibit 7, your declaration. Paragraph 15 is</p> <p>25 what I want to look at.</p>	<p style="text-align: right;">Page 72</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 were with O.W. USA; isn't that correct?</p> <p>3 MR. KEOUGH: Objection to the form.</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. We won't actually have to</p> <p>6 look at the document, so we'll save some time.</p> <p>7 Earlier Mr. Maloney asked you some</p> <p>8 questions about the instant messenger</p> <p>9 communications. Just one follow-up question.</p> <p>10 Are those communications, are they capable of</p> <p>11 being produced in the native or an original</p> <p>12 format?</p> <p>13 A. I don't know the answer to that.</p> <p>14 Q. Okay. Do you know who would know</p> <p>15 the answer to that at U.S. Oil?</p> <p>16 A. Either our IT guys, Lee Weber may</p> <p>17 know.</p> <p>18 Q. Earlier we also looked at purchase</p> <p>19 order confirmations issued to U.S. Oil with</p> <p>20 respect to these transactions, so why don't we</p> <p>21 take a look at one of them. If you would look</p> <p>22 at USOT Document 110?</p> <p>23 MS. METRO: This would be</p> <p>24 Exhibit 3?</p> <p>25 MR. HEILIG: This would be part of</p>
<p style="text-align: right;">Page 71</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. Okay.</p> <p>3 Q. Paragraph 15 says:</p> <p>4 "USOT negotiated its agreements</p> <p>5 with O.W. Denmark for the subject deliveries</p> <p>6 bunkers by USOT to the M/V VIENNA EXPRESS and</p> <p>7 M/V SOFIA EXPRESS at USOT's principal place of</p> <p>8 business in Tacoma, Washington."</p> <p>9 What's the basis for this</p> <p>10 statement, Mr. Nielsen?</p> <p>11 A. The basis for this statement is</p> <p>12 that our customer is the O.W. Denmark entity,</p> <p>13 and that our sales authorization and</p> <p>14 confirmation indicate that.</p> <p>15 Q. Did USOT actually negotiate with</p> <p>16 O.W. Denmark with respect to these transactions,</p> <p>17 or was it negotiating with O.W. USA?</p> <p>18 MR. KEOUGH: Objection to the form.</p> <p>19 A. The entity in the O.W. Bunker</p> <p>20 family that was operating was irrelevant to us,</p> <p>21 we were dealing -- who we were dealing with from</p> <p>22 a credit and sales standpoint was the Denmark</p> <p>23 entity.</p> <p>24 Q. Okay. In terms of the actual</p> <p>25 communications though, the actual communications</p>	<p style="text-align: right;">Page 73</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 Exhibit 3.</p> <p>3 A. Okay.</p> <p>4 Q. Have you seen this document before,</p> <p>5 Mr. Nielsen, or one like it?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see that this document is</p> <p>8 dated Houston 1, October 2014, toward the</p> <p>9 right-hand side?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you see toward the left,</p> <p>12 almost directly across, the delivery date is</p> <p>13 October 9, 2014?</p> <p>14 A. Right.</p> <p>15 Q. This is for the delivery of bunkers</p> <p>16 to the SANTA ROBERTA?</p> <p>17 A. Right.</p> <p>18 Q. The account stated is O.W. Bunker</p> <p>19 USA Inc.?</p> <p>20 A. Yes.</p> <p>21 Q. It lists the quantities of fuel and</p> <p>22 price per metric ton for that fuel?</p> <p>23 A. Yes.</p> <p>24 Q. Is it fair to say that at the time</p> <p>25 of receiving this document on or about</p>

<p style="text-align: right;">Page 74</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 October 1st, that the terms of the sales</p> <p>3 agreement were finalized prior to the physical</p> <p>4 delivery of the bunker fuel to the vessel?</p> <p>5 MR. KEOUGH: Objection to the form.</p> <p>6 A. I would say that certainly the</p> <p>7 quantities and price were determined.</p> <p>8 Q. Going back to Exhibit 8,</p> <p>9 Mr. Nielsen, which is the Verified Complaint.</p> <p>10 Let's take a look at paragraph 10. Have you</p> <p>11 read that paragraph, Mr. Nielsen?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. I'll paraphrase the first</p> <p>14 part, but it essentially says that U.S. Oil</p> <p>15 delivered approximately 2,700 metric tons of</p> <p>16 bunker fuel to the VIENNA EXPRESS at the Port of</p> <p>17 Tacoma on October 18th, and then "which the</p> <p>18 vessel accepted and acknowledged by stamping</p> <p>19 U.S. Oil Trading's bunker delivery receipt for</p> <p>20 the delivery."</p> <p>21 Mr. Nielsen, who physically</p> <p>22 presented the bunker delivery note to the</p> <p>23 vessel?</p> <p>24 A. It would have been the -- the</p> <p>25 documentation would have been there and it would</p>	<p style="text-align: right;">Page 76</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 authority to bind us?</p> <p>3 Q. Yes.</p> <p>4 A. They have the authority to sign</p> <p>5 this document, which is the main document that</p> <p>6 we viewed in billing.</p> <p>7 Q. It's their responsibility to</p> <p>8 collect a signature on the document to complete</p> <p>9 the transaction?</p> <p>10 A. That's correct.</p> <p>11 Q. Do they review any of the terms of</p> <p>12 the bunker delivery note with the vessel's</p> <p>13 officer at the time of signature?</p> <p>14 A. I don't have actual knowledge of</p> <p>15 that.</p> <p>16 Q. Well, I'm asking you as the court</p> <p>17 representative of U.S. Oil?</p> <p>18 A. I don't know.</p> <p>19 Q. Are they instructed to review the</p> <p>20 terms of the bunker delivery note with the</p> <p>21 receiving vessel at the time of execution?</p> <p>22 A. They would have been instructed to</p> <p>23 go through the paperwork and provide it to them,</p> <p>24 so I would assume that they would have discussed</p> <p>25 these things.</p>
<p style="text-align: right;">Page 75</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 have been presented by the barge representative.</p> <p>3 There's a packet that is delivered to each of</p> <p>4 the vessels.</p> <p>5 Q. Okay. That's delivered by a</p> <p>6 bargeman who's present at the time of the</p> <p>7 physical delivery?</p> <p>8 A. Yes.</p> <p>9 Q. I believe you said earlier that the</p> <p>10 barges are on a five-year charter. Olympic tug</p> <p>11 provides the personnel, but you control or</p> <p>12 operate the barge, is that correct?</p> <p>13 MR. KEOUGH: Objection to the form.</p> <p>14 A. Correct.</p> <p>15 Q. So would it then be an employee of</p> <p>16 Olympic Tug &amp; Barge who's presenting the</p> <p>17 documents to the receiving vessel?</p> <p>18 A. Correct.</p> <p>19 Q. Does that bargeman have authority</p> <p>20 to bind U.S. Oil, or to negotiate or alter</p> <p>21 contractual terms on behalf of U.S. Oil?</p> <p>22 MR. KEOUGH: Objection. Do you</p> <p>23 want to break that down?</p> <p>24 MR. HEILIG: No.</p> <p>25 A. You're asking me if they have the</p>	<p style="text-align: right;">Page 77</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 Q. Are there any policies or</p> <p>3 guidelines, written instructions directing the</p> <p>4 bargeman to go over the terms of the bunker</p> <p>5 delivery note with the receiving vessel at the</p> <p>6 time of execution?</p> <p>7 A. I don't know for sure.</p> <p>8 Q. Is it U.S. Oil's position that the</p> <p>9 language on the bunker delivery notes alone is</p> <p>10 sufficient to create a maritime lien against</p> <p>11 these vessels?</p> <p>12 MR. KEOUGH: Objection to the form;</p> <p>13 calls for a legal conclusion.</p> <p>14 A. I'm not an attorney, but that's</p> <p>15 what we think.</p> <p>16 Q. I'm sorry, were you going to</p> <p>17 complete that thought or was that the end of</p> <p>18 your answer?</p> <p>19 A. That was the end of my answer.</p> <p>20 Q. Okay. So then do I understand</p> <p>21 correctly U.S. Oil's position that the</p> <p>22 relationships among the vessel interests in O.W.</p> <p>23 entities and U.S. Oil is irrelevant, so long as</p> <p>24 the bunker delivery note is executed that U.S.</p> <p>25 Oil has a maritime lien against the vessels?</p>

<p style="text-align: right;">Page 86</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 that there's an approved transaction in</p> <p>3 connection with the customer that's listed.</p> <p>4 Q. Okay. I'm looking at the sales</p> <p>5 authorization on Bates page 5. If you look down</p> <p>6 kind of the top third of the page you see it</p> <p>7 says "Terms, wire transfer due 30 days from</p> <p>8 COM." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What is COM?</p> <p>11 A. I think that's the money. The wire</p> <p>12 is due 30 days from the date of delivery, and</p> <p>13 I'm not sure if that COM stands for commencement</p> <p>14 of delivery or not, but it is 30 days from the</p> <p>15 date of delivery.</p> <p>16 Q. Okay. Underneath that same line we</p> <p>17 see "credit check required" and then there's</p> <p>18 "yes," do you see that?</p> <p>19 A. I do.</p> <p>20 Q. What does that mean?</p> <p>21 A. That means that the credit check</p> <p>22 had already been done in connection with O.W.</p> <p>23 Bunker &amp; Trading A/S.</p> <p>24 Q. That credit check was the process</p> <p>25 you testified to earlier today?</p>	<p style="text-align: right;">Page 88</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 MR. KEOUGH: Objection to the form.</p> <p>3 A. In order to be paid from O.W.</p> <p>4 Bunker, yes, we had to submit an invoice and the</p> <p>5 bunker delivery receipt.</p> <p>6 Q. Are you familiar with the term</p> <p>7 Marpol, M-a-r-p-o-l?</p> <p>8 A. I've heard it, but I'm not familiar</p> <p>9 with it.</p> <p>10 Q. I am assuming that in your realm of</p> <p>11 responsibility, U.S. Oil's compliance with</p> <p>12 environmental or pollution regulations does not</p> <p>13 fall within your purview?</p> <p>14 MR. KEOUGH: Objection.</p> <p>15 A. We have a -- we have an</p> <p>16 environmental manager on staff.</p> <p>17 Q. Who is that individual?</p> <p>18 A. His name is Ty Daub.</p> <p>19 Q. Ty, say again?</p> <p>20 A. Daub, D-a-u-b.</p> <p>21 Q. Do you, Mr. Nielsen, have an</p> <p>22 understanding one way or another whether U.S.</p> <p>23 Oil is required by environmental and pollution</p> <p>24 regulations to issue a bunker delivery receipt</p> <p>25 for every bunker supply it provides within U.S.</p>
<p style="text-align: right;">Page 87</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. Correct.</p> <p>3 Q. At the time of these transactions,</p> <p>4 did U.S. Oil have a general standard terms and</p> <p>5 conditions that applied to all bunker</p> <p>6 transactions that it engaged in?</p> <p>7 MR. KEOUGH: Objection to the form.</p> <p>8 A. We did not. I don't think any</p> <p>9 general terms and conditions were issued in</p> <p>10 connection with this.</p> <p>11 Q. If you turn now to the purchase</p> <p>12 order confirmation from OWB to U.S. Oil, which</p> <p>13 is Bates pages 3 and 4. I'm going to direct</p> <p>14 your attention to Bates page 4, the fourth</p> <p>15 paragraph down where it begins:</p> <p>16 "Please forward invoice and</p> <p>17 delivery receipts duly signed and stamped by</p> <p>18 relevant vessels, master/chief engineer right</p> <p>19 after completion of bunkering."</p> <p>20 Do you see that statement?</p> <p>21 A. Right.</p> <p>22 Q. Is it a fair statement that in</p> <p>23 order to obtain payment from O.W., U.S. Oil</p> <p>24 needed to tender to O.W. a completed and signed</p> <p>25 bunker delivery receipt from the vessels?</p>	<p style="text-align: right;">Page 89</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 waters?</p> <p>3 MR. KEOUGH: Objection to the form.</p> <p>4 A. I am not.</p> <p>5 Q. If you can turn to Bates pages 40,</p> <p>6 41 and 42 please. For the record, you'll see</p> <p>7 that that is an email from a Dorit Niemeyer,</p> <p>8 D-o-r-i-t, N-i-e-m-e-y-e-r, with an email</p> <p>9 address at hlag.com, which is Hapag, and it's</p> <p>10 sent to Mr. Niemeyer himself and two individuals</p> <p>11 who have email addresses at owbunker.de, do you</p> <p>12 see that?</p> <p>13 A. I do.</p> <p>14 Q. U.S. Oil is not copied on this</p> <p>15 communication, correct?</p> <p>16 A. They are not.</p> <p>17 Q. Did U.S. Oil in the ordinary</p> <p>18 course, meaning not in connection with this</p> <p>19 litigation but in the ordinary course, did U.S.</p> <p>20 Oil receive the document, the email that is</p> <p>21 depicted in Bates pages 40-42?</p> <p>22 MR. KEOUGH: Objection to the form.</p> <p>23 A. No.</p> <p>24 Q. Do you know who the individuals are</p> <p>25 with the email addresses reflected on page 40</p>

<p style="text-align: right;">Page 90</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 @owbunker.de? I'm not asking you to guess, just</p> <p>3 if you know?</p> <p>4 A. I do not.</p> <p>5 Q. If you turn to Bates pages 43, 44</p> <p>6 and 45. For the record, that is an O.W. Bunker</p> <p>7 sales order confirmation from O.W. Bunker</p> <p>8 Germany with respect to the VIENNA EXPRESS. Do</p> <p>9 you see that?</p> <p>10 A. I do.</p> <p>11 Q. Did U.S. Oil receive this document</p> <p>12 in the ordinary course of these transactions?</p> <p>13 A. No, it did not.</p> <p>14 Q. Okay. Thanks. Before we move on,</p> <p>15 turn to Bates page in the stack 94, 95 and 96,</p> <p>16 which for the record I'll describe in general is</p> <p>17 an email from Hapag regarding the SOFIA EXPRESS</p> <p>18 to two individuals with email addresses at</p> <p>19 owbunker.de, do you see that?</p> <p>20 A. I do.</p> <p>21 Q. The same questions as before. Did</p> <p>22 U.S. Oil receive this email communication in the</p> <p>23 ordinary course with respect to the SOFIA</p> <p>24 EXPRESS?</p> <p>25 MR. KEOUGH: Same objection.</p>	<p style="text-align: right;">Page 92</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 208 through 210. For the record, that's an</p> <p>3 email communication from Lukas Gaus at Hapag to</p> <p>4 two email addresses, with the email address</p> <p>5 @owbunker.de, regarding the SEASPAN HAMBURG.</p> <p>6 Do you see that Mr. Nielsen, at the</p> <p>7 top?</p> <p>8 A. I do.</p> <p>9 Q. Did U.S. Oil receive this document</p> <p>10 in the ordinary course with respect to the</p> <p>11 SEASPAN HAMBURG?</p> <p>12 MR. KEOUGH: Objection.</p> <p>13 A. No.</p> <p>14 Q. Then flip to Bates page 211. The</p> <p>15 sales order confirmation from O.W. Bunker</p> <p>16 Germany with respect to the SEASPAN HAMBURG.</p> <p>17 Did U.S. Oil receive this document</p> <p>18 in the ordinary course with respect to the</p> <p>19 SEASPAN HAMBURG?</p> <p>20 A. No. Can you pick up Exhibit 8,</p> <p>21 which was the Verified Complaint.</p> <p>22 MR. KEOUGH: The witness has it.</p> <p>23 Q. Can you turn to paragraph 8. Take</p> <p>24 a moment to read that paragraph to yourself,</p> <p>25 please. What is the basis for the statement</p>
<p style="text-align: right;">Page 91</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 A. We did not.</p> <p>3 Q. Just so we can be complete with</p> <p>4 these, go to Bates pages 152 through 154. For</p> <p>5 the record, that is an email from a Lukas,</p> <p>6 L-u-k-a-s, Gaus, G-a-u-s, at Hapag to two email</p> <p>7 addresses with the address @owbunker.de</p> <p>8 concerning the SANTA ROBERTA.</p> <p>9 Do you see that, Mr. Nielsen?</p> <p>10 A. I do.</p> <p>11 Q. The same question. Did U.S. Oil</p> <p>12 receive this email communication in the ordinary</p> <p>13 course with respect to the SANTA ROBERTA?</p> <p>14 MR. KEOUGH: Same objection.</p> <p>15 A. No, we did not.</p> <p>16 Q. If you turn to Bates page 155,</p> <p>17 which is the sales order confirmation from O.W.</p> <p>18 Bunker Germany to Hapag concerning the SANTA</p> <p>19 ROBERTA.</p> <p>20 Did U.S. Oil receive this document</p> <p>21 in the ordinary course with respect to this</p> <p>22 vessel?</p> <p>23 A. No, we didn't.</p> <p>24 MR. KEOUGH: Same objection.</p> <p>25 Q. The last one. Turn to Bates pages</p>	<p style="text-align: right;">Page 93</p> <p>1 Thor Nielsen (1-7-16)</p> <p>2 that:</p> <p>3 "On or about October 15, 2014, the</p> <p>4 Owners and/or Operators and/or Charterers and/or</p> <p>5 Agents of the M/V VIENNA EXPRESS entered into an</p> <p>6 agreement with brokers O.W. Bunker &amp; Trading A/S</p> <p>7 OWB to arrange for the delivery of bunker fuel</p> <p>8 to the VIENNA EXPRESS at Tacoma on or about</p> <p>9 October 18th"?</p> <p>10 MR. KEOUGH: Objection to the form.</p> <p>11 You can answer.</p> <p>12 A. What I was saying here is that O.W.</p> <p>13 Bunker was acting as a broker in this market</p> <p>14 because they don't deliver to the vessels, we</p> <p>15 deliver to the vessels, and so they were acting</p> <p>16 as an agent for the VIENNA EXPRESS.</p> <p>17 Q. Let's break that apart. First off,</p> <p>18 when you talk about OWB not actually being</p> <p>19 involved in the physical delivery to vessels.</p> <p>20 Did USOT have an understanding as</p> <p>21 to whether O.W. owned or operated vessels</p> <p>22 themselves, the vessels that were to be</p> <p>23 supplied?</p> <p>24 MR. KEOUGH: Objection to the form.</p> <p>25 A. We did not. We knew they didn't</p>

24 (Pages 90 to 93)